IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3314 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HAKKIMCHAND G. TRIVEDI

Versus

DIST. SUPERINTENDENT OF POLICE

Appearance:

1. Special Civil Application No. 3314 of 1991

MR GM JOSHI for Petitioner No. 1

MR ND GOHIL, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-3

MR SP HASURKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 13/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged

the order dated 22.4.1991, by which the services of the petitioner as an Armed Police Constable, came to be terminated with effect from one month from the date of service of the notice.

2. The short facts leading to the present petition are that the petitioner had applied for and was selected pursuant to a regular selection process, for which the interviews were conducted on 1.12.1990 for the post of Armed Police Constable. Upon selection through the regular selection process, the petitioner was appointed to the post of Armed Police Constable and sent for undergoing a training at SRP Training Centre. It is the case of the petitioner that during the training period on 14.2.1991, the petitioner fell sick. The petitioner therefore, approached his superior officer to grant him permission to go to his native place for treatment. The request of the petitioner however, was turned down by the superior officer, but since the petitioner was suffering from high fever, he left the SRP Training Centre nevertheless. The petitioner further states that he had gone to his native place at Palanpur for further treatment and it was found that he was suffering from typhoid and kidney stone for which he had to take treatment for about 50 days. Upon recovering from the ailments, the petitioner reported for duty at SRP Training Centre and requested the respondent No.1 to allow him to continue his training. The petitioner reported for duty along with a letter dated 2.4.1991 and a medical certificate in support of his case of having fallen sick. The petitioner states that he was however, not allowed to resume duty and in fact, by impugned order dated 24.2.1991, the petitioner was given one month's notice and informed that his services are no longer required.

3. The learned Counsel for the petitioner has challenged the impugned order mainly on three grounds. It is contended that no hearing was given to the petitioner before passing the impugned order and therefore, the impugned order is in violation of principles of natural justice. It is next contended that the order of discharge, though on the face of it appears to be a simpliciter termination, in essence the same is punitive in nature since the services of the petitioner is sought to be terminated for alleged unauthorised absence. Such an order, according to the learned Counsel for the petitioner, cannot be passed without holding an enquiry and proving the charges against the petitioner. The third ground of challenge is that services of

similarly situated persons who had also remained absent during the training period have not been terminated and the petitioner is discriminated for this hostile treatment.

4. The respondents have filed their affidavit in reply dated 29.6.1991 and have contended inter-alia that the petitioner was never appointed on regular basis, but he was undergoing a training preparatory to the regular appointment where he was found to be careless and he had also absconded from service. Upon consideration of these facts, the authorities came to the conclusion that the petitioner would not turn out to be a good Police Constable and therefore, in accordance with the Rules, the petitioner was relieved from duties. It is further stated in the affidavit that one of the conditions of the appointment order dated 17.4.1990 is that his services will be terminated at any time without notice or assigning any reason. It is further stated that the petitioner was found careless while undergoing the training and on 14.2.1991, without taking any prior permission of the authorities, the petitioner left the training camp and had absconded from training. It is further stated that the authority imparting the training had also reported to the respondent No.1 that the petitioner had absconded and that he is not likely to turn out to be a good Police Constable. It is further stated that the petitioner was also not remaining present regularly in the training classes and the absence of the petitioner had exceeded 25% of the total duration of the training period and therefore, the petitioner was not permitted to appear at the examination. It is further stated that the petitioner was to be appointed as Armed Police Constable and in the Police force, punctuality and regular performance of the duties is very much necessary. A person who is in the habit of absconding even during the training period is unlikely tobe turned out to be a good Armed Police Constable.

5. The first ground raised by the petitioner, namely the non-hearing of the petitioner before passing the impugned order and also the ground of the impugned order not being simpliciter termination but being punitive in nature can be considered simultaneously.

6. It is not in dispute that the petitioner was not yet confirmed on the post of Armed Police Constable. The petitioner was only undergoing a training which is a pre-requisite for considering him to be appointed to the post of Armed Police Constable. The case of the petitioner, therefore, cannot be on a higher pedestal

than that of a probationer who has yet to complete successfully his probation and secure a confirmed appointment in Government. It is by now well settled that services of a probationer can be terminated for unsatisfactory performance and unless the termination is actuated by some misconduct which is foundation of such a termination, there would be no requirement of hearing the concerned employee.

6.1 In the decision of the Hon'ble Supreme Court in the case of Mathew P. Thomas V. Kerala State Civil Supply Corporation Limited, reported in AIR 2003 SC 1789, the apex Court was pleased to make the following observation:-

"From long line of decisions it appears to us whether an order of termination is simpliciter or punitive has ultimately to be decided having due regard to the facts and circumstances of each case. Many a times the distinction between the foundation and the motive in relation to an order of termination either is thin or overlapping. It may be difficult either to categorize or classify strictly orders of termination simpliciter falling in one or the other category, based on misconduct as foundation for passing the order of termination simpliciter or on motive on the ground of unsuitability to continue in service. If the form and language of the so called order of termination simpliciter of a probationer clearly indicate that it is punitive in nature or/and it is stigmatic there may not be any need to go in to the details of the background and surrounding circumstances in testing whether the order of termination is simpliciter or punitive. In cases where the services of a probationer are terminated by an order of termination simpliciter and the language and form of it do not show that either it is punitive or stigmatic on the face of it but in some cases there may be a background and attending circumstances to show that misconduct was the real basis and design to terminate the services of a probationer. In other words, the facade of the termination order may be simpliciter but the real face behind it is to get rid of services of a probationer on the basis of misconduct. In such cases it becomes necessary to travel beyond the order of termination simpliciter to find out what in reality is the background and what weighed with the employer to terminate the services of a

probationer. In that process it also becomes necessary to find out whether efforts were made to find out the suitability of the person to continue in service or he is in reality removed from service on the foundation of his misconduct."

6.2 In the decision of the Hon'ble Supreme Court in the case of Dhananjay V. Chief Executive Officer, Zilla Parishad, Jaina, reported in AIR 2003 SC 1175, the apex Court was examining the case of termination of a temporary employee who was placed under suspension on allegation of making excess payment to contractor and enquiry into allegations was also directed but not held and the employee was also acquitted in the criminal case and thereafter, his services came to be terminated. In this context, the Hon'ble Supreme Court observed that merely because appellant was suspended, criminal proceedings were taken against him and enquiry into allegations was ordered, the order does not become stigmatic. In paragraph 6 of the said decision, the following observations have been made:-

"6. If we look to the paragraph extracted above, it becomes clear that the facts of that case are almost similar to the facts of the present case. Although a distinction was sought to be made to contend that that judgement has no application to the facts of the present case, we are unable to agree with the submission. Merely because the appellant was kept under suspension, that by itself, is not indicative that the respondent had intended from the beginning to get rid of the services of the appellant by holding an enquiry. It is not the case of the appellant that in spite of the fact that his services were needed, the order of termination of services was passed. Even though the appellant was acquitted in the criminal case launched against him on the basis of the complaint made by the respondent, is also not a factor to indicate that the respondent wanted to take action against the appellant on his misconduct to remove him from service."

6.3 In yet another decision of the Hon'ble Supreme Court in the case of Commandant, 11th Battalion, A.P. Special Police (IR) Cuddapah, Cuddapah District V. B. Shankar Naik, reported in AIR 2003 SC 2249, the Hon'ble Supreme Court was considering the case of Police Constables, who were placed on probation for a period of 3 years and were also required to undergo training in the

Police Recruitment School, in which case, one of the conditions stipulated in the appointment order was that they should pass the language test within the period of probation and in case of failure, they shall be discharged from the service. The services were terminated on the ground that they had failed to pass the prescribed test within the prescribed period of probation. The Hon'ble Supreme Court held that the appointment clearly stipulates that the Government servant should undergo the basic training and the training which is given cannot be rendered purposeless and successful completion of the training is an inbuilt requirement for continuance in the service.

7. Keeping the above principles laid down by the Hon'ble Supreme Court in mind and reverting back to the facts of the present case, one finds that the petitioner while undergoing the training had suddenly left the training centre and reported back after 54 days on the ground of sickness. The petitioner has stated in his petition that he had told his superior officer to grant him permission to go to his native place for treatment, but the superior officer refused to grant him the permission. Neither in the petition, nor in the rejoinder, has the petitioner given the name of the superior officer whom the petitioner had approached for such a permission. During his absence also, the petitioner had not corresponded with the respondent. Before leaving the camp also the petitioner does not appear to have left any written request. Suddenly when the petitioner reappeared after 54 days of gap, the petitioner approached the authorities with a letter and a certificate of the doctor, that too of a private doctor and not a Civil Surgeon. The respondents in the reply have clearly stated that apart from this lapse, otherwise also the petitioner was found careless and not sincere in undergoing the training and that he was not attending the classes regularly. In that view, the respondents were prompted to conclude that the petitioner was not likely to turn out to be a good Police Constable and the impugned order of relieving the petitioner from service came to be passed. No fault can be found with the respondents in adopting the said course. Even before the petitioner is regularly appointed to the post of Armed Police Constable, he has shown utter disregard and carelessness towards his responsibilities. The case of the petitioner that he was actually sick does not inspire confidence as the petitioner has neither given the details of the superior officer whom he approached for permission to leave the camp, nor has he left any written request with the authorities before leaving the training

centre, nor has the petitioner made any attempt to communicate his whereabouts during his period of absence.

8. In view of the fact that the petitioner was undergoing training and was not confirmed on the post, the action of the respondents in terminating the services by the impugned order cannot be found fault with. The order on the very face of it cannot be termed as stigmatic, nor can it be so categorised even after attempting to lift the veil as suggested by the learned Counsel for the petitioner. It is not possible to hold that the foundation for the termination was any allegation of misconduct and I therefore, conclude that the impugned order was simpliciter termination and was validly passed by the competent authority and that there was no necessity to hear the petitioner before passing such an order.

9. The petitioner's contention with respect to similarly situated persons being treating differently must also fail. There cannot be any similarity and each case must depend upon the facts of the individual case. The petitioner was found lacking sincerity and was found to be absconded from training, the successful completion of which was a precondition to appear in the examination and passing of the examination was a precondition of securing permanent appointment. When the petitioner had shown negligence and laxity in undergoing the training, the decision of the authorities to discontinue him from service on the conclusion that he is unlikely to turn out to be a good Police Constable, cannot be held to be unlawful, illegal or unjust decision. The facts of each case being different, it is not possible to compare the case of the petitioner with any other officer, and the petitioner has to independently establish before this Court that the view of the authority is so utterly perverse that this Court would be in a position to interfere with the same in exercise of powers under Article 226 of the Constitution of India. Since the petitioner has failed to establish this important aspect of the matter, it is not possible for this Court to interfere with the impugned decision.

10. In the result, I find no merit in the petition. The petition fails and is hereby rejected. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas